

## **REMARKS/ARGUMENTS**

This communication is in response to the Final Office Action dated July 1, 2009. Claims 1-20 were previously canceled, without prejudice. Claim 21 has been amended. No new matter has been added. Claims 21-37 remain pending in this application with claims 21 and 37 being the only independent claim. Reconsideration is respectfully requested in view of the amendments above and arguments presented.

### **Entry of After Final Amendment and Consideration of Arguments**

The Examiner is required to enter the amendment to claim 21 in that the same limitation is already found in claim 37 and thus would not necessitate additional search and/or consideration. Furthermore, claim 37 has not been amended and the same arguments apply to claim 37. Accordingly, the arguments with respect to both claims 21 and 37 must be considered in the present amendment.

### **Prior Art Rejections**

Claims 21, 22 and 37 are rejected under 35 U.S.C. §102(e) as anticipated by Carter et al. (U.S. Patent Application Publication No. 2004/0054732).

Claims 23-27 and 32-36 are rejected under 35 U.S.C. §103(a) as obvious over Carter et al. in view of the Grube et al. (U.S. Patent Application Publication No. 2003/0100326).

Claims 28-31 are rejected under 35 U.S.C. §103(a) as obvious over Carter et al. and Grube et al. in view of Wu et al. (U.S. Patent Application Publication No. 2004/0203946).

Applicants respectfully traverse the prior art rejections for the reasons provided below.

### **Independent Claims 21 and 37**

Independent claims 21 and 37 state “subscriber peripheral units (1, 4).” (emphasis added) Claim 37 further provides, “the message (7) is being distributed to all subscribers therein is specified by different distribution classes.” (emphasis added) In accordance with the present

invention only those peripheral units that are subscribers are possible intended recipients. Therefore peripheral units retain control over whether or not to exchange information based on whether they become a subscriber.

Each intended recipient in Carter et al. is specifically identified (e.g., e-mail address, street address or physical location) by the sender who maintains complete autonomy over information exchange. In the case of a specified physical location, the message is transmitted globally to all recipients based only on their physical location. Carter et al. thus fails to disclose or suggest that the intended recipients of the information exchange must also be a “subscriber.” The intended recipients have no control over whether or not to participate in the information exchange. Accordingly, claims 21 and 37 are distinguishable over Carter et al.

Claims 21 and 37 are further distinguishable in that each calls for “wherein the region in which the message (7) is being distributed is specified by different distribution classes, including the classes ‘local’, ‘walking distance’ and ‘city wide’, whereby the distribution class ‘local’ covers approximately the size of a radio cell and /or the neighboring cells, the distribution class ‘walking distance’ covers the region within a walking distance, and the distribution class ‘city wide’ covers a region within the borders of a city.”

In the outstanding Final Office Action the Examiner maintains that Carter et al. teaches this limitation stating, “For example, the sender sets the range is [sic] 3 miles for distributing the messages or advertisements, so that the range is equal to the size of the radio cell which covers all of three classes, e.g., local, walking distance and city wide.” {July 1, 2009 Final Office Action: p. 3, ll. 4-17} Nothing in Carter et al. discloses or suggests setting of a geographical range so that it corresponds to the size of a radio cell. The mere fact that a particular range of three miles could possibly correspond to a radio cell size range still does not link the particular range to a radio cell size range, as called for in claims 21 and 37.

For at least the foregoing reasons applicant submits that claims 21 and 37 are patentable over the prior art of record. Claims 22-36 depend from independent claim 21 and thus are patentable over the prior art of record for at least the same reasons discussed above with respect to claim 21.

**CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

**ADDITIONAL FEE**

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By 

Christa Hildebrand

Reg. No. 34,953

875 Third Avenue - 18<sup>th</sup> Floor

New York, New York 10022

Phone: (212) 808-0700

Fax: (212) 808-0844

Facsimile: (212)808-0844

00146094CH/CFC